

**United States Department of Labor
Employees' Compensation Appeals Board**

P.H., Appellant

and

**U.S. POSTAL SERVICE, BULK MAIL
CENTER, Denver, CO, Employer**

)
)
)
)
)
)
)
)

**Docket No. 15-0482
Issued: August 4, 2015**

Appearances:

*John S. Evangelisti, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 30, 2014 appellant, through counsel, timely appealed the July 29, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.²

ISSUE

The issue is whether appellant sustained a consequential injury on March 24, 2000.

¹ 5 U.S.C. §§ 8101-8193 (2006).

² The case record provided to the Board includes evidence received after OWCP issued its July 29, 2014 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1) (2014).

FACTUAL HISTORY

This case was previously before the Board. Appellant, a 60-year-old distribution clerk, has an accepted claim for post-traumatic stress disorder (PTSD) which arose on July 12, 1999 as a result of an altercation with her then supervisor.³ In October 1999 she resumed work at another facility with a different supervisor.

On March 24, 2000 appellant asked Ed Loffredo, an attendance control supervisor, to sign a note she had written to remind herself which forms she needed to submit for her workers' compensation claim.⁴ He refused to sign the note. Appellant alleged that Mr. Loffredo yelled at her and waved his arms in a threatening manner and allegedly told appellant he did not care whether her paycheck was correct. She stated that she thought Mr. Loffredo was going to physically hurt her. Mr. Loffredo indicated that he kept his hands in his pockets and used a soothing voice as he explained to appellant why he would not sign her note. OWCP accepted that Mr. Loffredo refused to sign appellant's personal note. However, appellant failed to establish that he waved his arms and yelled at her.

A few hours after the March 24, 2000 incident, appellant was treated in the emergency room for acute anxiety reaction.⁵ She did not report for work on March 25, 2000. Appellant filed various claims for wage-loss compensation beginning March 25, 2000. OWCP has adjudicated the March 24, 2000 incident as both a new traumatic injury and an occupational disease claim (xxxxxx296). Additionally, the claim has been adjudicated as a recurrence of appellant's July 12, 1999 employment injury, and more recently, as a consequential injury of her employment-related PTSD.⁶

On two prior occasions, the Board addressed the issue of whether appellant sustained a consequential injury.⁷ When the Board last reviewed the merits in August 2012, it affirmed

³ Appellant's supervisor, Kristine L. Prusak, yelled at her, used profanity and was verbally abusive and threatening. OWCP accepted that on July 12, 1999 appellant had a heavy load of mail and she requested assistance from Ms. Prusak, who responded "Too bad." Appellant later received some assistance, but she did not complete her assignment until after her lunch break. When Ms. Prusak returned, she yelled at appellant because appellant failed to advise her of the late dispatches. She also used profanity and verbally threatened appellant. Later that day, Ms. Prusak continued her verbal assault while appellant waited outside the operations manager's office to report the earlier incident. Appellant contacted the postal service police. After taking statements, the police declined to intervene because they considered the incident an "administrative problem."

⁴ Appellant's March 24, 2000 note stated in relevant part: "I Daniel Kuenz ... along with Ed Lafreydo (sic) ... have instructed [appellant], she must fill out forms CA-7..., CA-20..., and CA-7a.... This will be done for each pay period of leave without pay for continuation of pay."

⁵ The emergency room attending physician indicated that appellant's condition was due to "a combination of not taking her medications ... and having an argument with her boss."

⁶ The Board previously affirmed OWCP's denial of appellant's claimed recurrence of disability beginning March 25, 2000. Docket No. 04-1480 (issued December 30, 2005). At the time, counsel also argued that appellant's work stoppage was the result of a March 24, 2000 consequential injury. However, OWCP had not yet issued a decision with respect to that particular issue.

⁷ Docket No. 08-1872 (issued June 2, 2009); Docket No. 11-1670 (issued August 16, 2012).

OWCP's May 16, 2011 decision denying compensation for a consequential injury. Counsel argued that the March 24, 2000 incident with Mr. Loffredo reawakened or triggered appellant's memory of the July 12, 1999 altercation with her prior supervisor, and thus, aggravated her PTSD. However, the Board found that the medical evidence failed to establish a causal relationship between appellant's original injury and the claimed consequential injury. The Board's August 16, 2012 decision is incorporated herein by reference.

Appellant's counsel subsequently requested reconsideration and submitted additional evidence including treatment notes from appellant's therapist, Virginia H. Poor, a licensed clinical social worker (LCSW). OWCP also received transcripts of two recent depositions. By decision dated April 23, 2013, it denied further merit review on the basis that evidence submitted was cumulative. The Board disagreed.⁸

On reconsideration, counsel had submitted the November 21, 2012 deposition of Dr. Randolph W. Pock, a Board-certified psychiatrist and OWCP-referral physician, who previously examined appellant in April 2010. In his deposition, Dr. Pock indicated that appellant's interaction with Mr. Loffredo triggered her March 24, 2000 panic attack, which was a symptom of PTSD. He explained that the incident with Mr. Loffredo evoked memories of appellant's initial injury, and under this theory, she suffered a consequential injury.

Counsel also submitted the December 7, 2012 deposition of Dr. Carole S. Kornreich, a psychiatrist, who first treated appellant in January 2006. Dr. Kornreich indicated that the incident with Mr. Loffredo was one of several workplace events that reminded appellant of her prior injury. She explained that, when appellant returned to work, her original injury had not optimally resolved, and was constantly aggravated to the point where appellant just decompensated profoundly.

The Board found that the recent depositions of Dr. Pock and Dr. Kornreich were relevant and pertinent new evidence not previously considered by OWCP. Therefore, appellant was entitled to merit review pursuant to 20 C.F.R. § 10.608(a). Accordingly, the Board remanded the case to OWCP for merit review and a determination of whether modification of the May 16, 2011 decision was warranted. The Board's May 6, 2014 decision is incorporated herein by reference.

In a July 29, 2014 decision, OWCP found the evidence insufficient to modify its May 16, 2011 decision. The senior claims examiner determined that neither Dr. Pock nor Dr. Kornreich adequately explained how an ostensibly nonthreatening interaction with a supervisor on March 24, 2000 resembled or symbolized the July 12, 1999 incident, thus, aggravating appellant's PTSD.

LEGAL PRECEDENT

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent

⁸ Docket No. 13-2183 (issued May 6, 2014).

intervening cause attributable to claimant's own intentional misconduct.⁹ Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.¹⁰ The Board has recognized PTSD as a compensable consequential injury under circumstances where a certain triggering event has been medically demonstrated to have caused a reawakening or exacerbation of PTSD symptoms.¹¹

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.¹² Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹³ A clinical psychologist may serve as a treating physician for a work-related emotional condition.¹⁴

ANALYSIS

On appeal, counsel seeks to relitigate many of the issues and arguments addressed in prior decisions. As noted by the senior claims examiner, counsel requested that OWCP reverse all prior decisions denying wage-loss benefits due to a recurrence or consequential or intervening injury. However, OWCP correctly limited its analysis to the scope of the May 16, 2011 merit decision and the Board's May 6, 2014 instructions on remand. Accordingly, the only issue currently before the Board is whether the latest findings from Drs. Pock and Kornreich demonstrate that appellant sustained a consequential injury on March 24, 2000.¹⁵

At OWCP's request, Dr. Pock examined appellant on April 23, 2010. At that time, he diagnosed PTSD and found appellant totally disabled. Based on the information provided, including the statement of accepted facts (SOAF), Dr. Pock stated that he "[could not] find grounds for a consequential injury." He explained that appellant's ongoing symptoms represented a continuation of her July 12, 1999 PTSD. Appellant's counsel deposed Dr. Pock on July 21, 2010. During the deposition, Dr. Pock did not specifically address whether appellant sustained a consequential injury on March 24, 2000. He explained that the cumulative effect of various life stressors, including the incident with Mr. Loffredo, contributed to appellant's

⁹ *Mary Poller*, 55 ECAB 483, 487 (2004); 1 Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation*, 10-1 (2006).

¹⁰ *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

¹¹ *Charlet Garrett Smith*, 47 ECAB 562 (1996).

¹² 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹³ *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

¹⁴ See 20 C.F.R. § 10.312; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(2) (January 2013).

¹⁵ As noted, the Board previously affirmed OWCP's May 16, 2011 decision based on the record as it existed at the time. Appellant's counsel has not presented any compelling reasons for revisiting the Board's prior findings as set forth in its August 16, 2012 decision.

March 24, 2000 panic attack.¹⁶ However, Dr. Pock did not single out the March 24, 2000 incident with Mr. Loffredo. He indicated that appellant's adverse reaction to the incident with Mr. Loffredo was caused by her PTSD; however, the specific incident itself was not sufficient to cause her PTSD. When counsel deposed him for a second time on November 21, 2012, Dr. Pock indicated that appellant's interaction with Mr. Loffredo triggered her March 24, 2000 panic attack, which was a symptom of PTSD. He noted that the incident with Mr. Loffredo evoked memories of appellant's initial injury, and thus, she suffered a consequential injury.

As noted, Dr. Pock had not previously singled out the incident with Mr. Loffredo as a triggering event of either appellant's PTSD or her March 24, 2000 panic attack. He previously included the incident with Mr. Loffredo as one among several life stressors that cumulatively contributed to appellant's March 24, 2000 panic attack. The November 21, 2012 deposition does not clearly explain the evolution of Dr. Pock's opinion regarding the impact of the March 24, 2000 incident with Mr. Loffredo. Dr. Pock did not explain how Mr. Loffredo's refusal to sign appellant's note evoked memories of her initial injury of July 12, 1999.

Dr. Kornreich similarly failed to explain how the March 24, 2000 incident with Mr. Loffredo triggered and reminded appellant of her prior injury. It is not readily apparent how the March 24, 2000 incident was purportedly a triggering event of appellant's PTSD. Consequently, the Board finds that Drs. Pock and Kornreich have not adequately explained the basis for their respective opinions on causal relationship.¹⁷

The Board further notes that the August 2012 through April 2014 treatment records from appellant's therapist, Virginia Poor, are insufficient to support her claim for FECA benefits. Ms. Poor is a LCSW, not a physician or psychologist.¹⁸

¹⁶ Dr. Pock referred to various incidents/events identified in the April 1, 2010 SOAF that OWCP found were not directly related to appellant's duties, and therefore, noncompensable. OWCP identified the July 12, 1999 incident with Ms. Prusak as the sole event considered to be related to appellant's employment duties. As to the March 24, 2000 incident with Mr. Loffredo, the SOAF indicated that he "refused to sign [appellant's] personal note used as a reminder ... of steps required to file FECA forms...." This latter incident fell under the heading of events "NOT" considered to be directly related to the employee's duties. According to the SOAF, appellant failed to establish that Mr. Loffredo "waved his arms and yelled at her when she persistently pursued his signature on personal notes." Other noncompensable events included appellant having felt pressure to return to work on October 25, 1999, stress from completing and filing required OWCP forms, supervisors having lost or failed to submit her timecards, having been shorted on four paychecks between October 1999 and January 2000, the agency failing to process her continuation of pay and claims for compensation, inadequate training for new assignments, and management changing appellant's work schedule.

¹⁷ Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

¹⁸ See *supra* notes 13 and 14.

Appellant bears the burden of establishing a causal relationship between her original injury and her claimed consequential injury, which she has failed to satisfy.¹⁹ Accordingly, the Board finds that OWCP properly denied modification of the May 16, 2011 decision.

CONCLUSION

Appellant failed to establish that she sustained a consequential injury on March 24, 2000, causally related to her July 12, 1999 employment injury. Therefore, her claimed disability beginning March 25, 2000 is not compensable.

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 4, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.7a (January 2013).